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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 17, 1998

BY HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: MM Docket No. 97-234

Dear Ms. Salas:

Transmitted herewith on behalf of The WB Television Network are an original and four copies of its Reply Comments in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,

Andrew S. Kersting

Enclosure

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses	)	MM Docket No. 97-234
	)	
Re-examination of the Policy Statement on Comparative Broadcast Hearings	)	GC Docket No. 92-52
	)	
Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases	)	GEN Docket No. 90-264

To: The Commission

REPLY COMMENTS OF
THE WB TELEVISION NETWORK

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February 17, 1998

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SUMMARY

As an emerging network, The WB Television Network ("The WB") can provide the Commission with a unique and important perspective concerning the issues raised in this proceeding. In attempting to establish itself as a viable competitor with the four major networks, the single most difficult impediment for The WB has been securing primary affiliations with a sufficient number of television stations to gain sufficient nationwide coverage. In order to promote the efforts of emerging networks, The WB requests that, in adopting new rules in an effort to implement the new statutory provisions which were enacted as part of the Balanced Budget Act of 1997, the Commission consider the significant impact its new rules will have on the development of emerging networks such as The WB.

If The WB and other new networks are to survive and become viable competitors of the four major networks, they must have the opportunity to compete for affiliates -- now -- in markets in which they currently have none. Accordingly, The WB has a strong interest in having the new rules adopted in this proceeding facilitate the prompt commencement of new service from new television stations because the additional broadcast outlets will provide it (as well as other emerging networks) with the opportunity to acquire additional primary affiliates, which are vital to the network's continued existence. In order to promote the prompt commencement of new service, and thereby further the significant public interest objective of encouraging the program diversity that is created by the emergence of new networks, the Commission should resolve conflicts between mutually-exclusive applications filed before July 1, 1997, through a competitive bidding process. Moreover, with respect to these Section 309(l) applications, the Commission should not solicit additional

mutually-exclusive applications, or include as eligible bidders in a public auction those parties who filed mutually-exclusive applications after June 30, 1997.

In order to further encourage those parties who filed applications before July 1, 1997, to resolve conflicts between their mutually-exclusive applications, and, at the same time, conserve the resources of the parties and of the Commission in avoiding the delay and expense involved in conducting a public auction, the Commission should continue to waive the provisions of Section 73.3525(a)(3) of its rules and permit white knight settlements for Section 309(l) applicants until the short-form application deadline.

Finally, the Commission should not subject mutually-exclusive modification applications to auctions.

BEFORE THE

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To: The Commission

REPLY COMMENTS OF THE WB TELEVISION NETWORK

The WB Television Network ("The WB"), by its attorneys, hereby submits these reply comments in connection with the *Notice of Proposed Rulemaking* in the above-captioned proceeding. The WB submits that, as an emerging network, it can provide the Commission with a unique and important perspective on the issues raised in this proceeding. Accordingly, as the Commission adopts new rules in an effort to implement the new statutory provisions which were enacted as part of the Balanced Budget Act of 1997 ("Budget Act"),[1] The WB respectfully requests that the Commission consider the significant impact its new rules will have on the development of emerging networks such as The WB.

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[1] Pub. L. No. 105-33, 11 Stat. 251 (1997).

INTRODUCTION AND BACKGROUND[2]

The Commission has long espoused a commitment to foster the ability of new networks to enter and compete in the television marketplace.[3] Dating back to 1941, when the Commission adopted its Chain Broadcasting rules, a primary goal of the Commission has been to remove barriers that inhibit the development of new networks.[4] In adopting the Chain Broadcasting rules, the Commission explained that the rules were intended to "foster and strengthen broadcasting by opening up the field to competition[:] An open door to networks will stimulate the old and encourage the new."[5]

Although the broadcast industry has changed dramatically since the Chain Broadcasting rules were adopted, the Commission's goal of "remov[ing] barriers that would inhibit the development of new networks"[6] is no less important today. Indeed, due to the paucity of unaffiliated television

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[2] The WB has provided certain of this background information in other rulemaking proceedings, but has included it in these reply comments for the benefit of the new members of the Commission.

[3] *See Report On Chain Broadcasting*, Commission Order No. 37, Docket 5060 (May 1941 at 88 ("*Report on Chain Broadcasting*"); *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting*, 25 FCC 2d 318, 333 (1970) ("*Competition and Responsibility in Network Television Broadcasting*"); *Fox Broadcasting Co. Request for Temporary Waiver of Certain Provisions of 47 C.F.R. §73.658*, 5 FCC Rcd 3211, 3211 and n.9 (1990) ("*Fox Broadcasting*"), (citing Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation* (Vol. 1 Oct. 1980)), *waiver extended*, 6 FCC Rcd 2622 (1991).

[4] *Report On Chain Broadcasting* at 88. Although the Chain Broadcasting rules were originally adopted for radio, they were applied to television in 1946. *Amendment of Part 3 of the Commission's Rules*, 11 Fed. Reg. 33 (Jan. 1, 1946).

[5] *Report On Chain Broadcasting* at 88.

[6] *Revisions of the Commission's Regulations Governing Programming Practices of*

(continued...)

stations in many markets and the number of choices (including the four incumbent broadcast networks) that vie for viewers' attention, the challenge of launching a new broadcast network is even more daunting today. Today's new networks -- The WB and UPN -- deserve the same chance that the earlier entrants were given to compete in the free over-the-air television market.

The WB was launched on January 11, 1995, with two hours of prime time programming per week, which was carried by 48 affiliated stations nationwide with an audience reach of 80 percent.[7] By the conclusion of the 1997-1998 broadcast year, The WB will be broadcasting nine hours of prime time programming on four nights, and will be carried by approximately 92 affiliated stations. As part of its regular weekly program schedule, The WB broadcasts 19 hours of children's programming, including programs designed to meet the educational and informational needs of its children's audience.

In attempting to establish itself as a viable competitor with the four major networks, the single most difficult impediment for The WB has been securing an affiliation with a sufficient number of television stations to gain and maintain sufficient nationwide coverage.[8] In some markets, The WB has experienced difficulty finding an available station for affiliation. In other markets, it has had difficulty finding sufficiently powerful stations with which to affiliate and provide adequate

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[6](...continued)
Broadcast Television Networks and Affiliates, 47 C.F.R. §73.658(a), (b), (d), (e) and (g), 10 FCC Rcd 11951, 11955 (1995).

[7] The 80 percent figure includes The WB's cable carriage on Superstation WGN-TV, Channel 9, Chicago, Illinois. Without WGN-TV's carriage, The WB's over-the-air audience reach was 61 percent at launch.

[8] The WB's national advertisers require coverage of at least 80 percent of the country.

market coverage. Unlike the established networks, which have extensive distribution systems composed of powerful VHF stations, The WB network has only 11 VHF affiliates, and is primarily composed of weaker UHF stations. The WB also has been forced to rely on low power stations or cable carriage in some markets. In other markets, The WB has had no alternative but to enter into secondary affiliations with stations that have a primary affiliation with another network.[9] Together, these difficulties have significantly hampered The WB's quest for nationwide reach.

Finding stations with which to affiliate has been particularly frustrating for The WB because it has no control over (or the ability to increase) the number of available television stations in a particular market. The WB also cannot change the fact that it is, at best, the fifth -- or in some cases the sixth -- entrant in a market. The immutable fact is that almost two-thirds of all television markets have only four commercial TV stations. Fewer than 20 percent of all markets have six or more commercial stations. Even in those markets where there are six or more stations, that number of broadcast facilities does not necessarily ensure that one is available to The WB for affiliation. In addition to affiliating with ABC, CBS, NBC and Fox, incumbent stations in many markets frequently have existing affiliations with a home shopping or religious network, making them unavailable to new network entrants.

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[9] Secondary affiliations are The WB's least favorable alternative because the hallmark of a network is the ability to run its programming "in pattern," *i.e.*, in the order determined by the network and simultaneously (within the same time zone) by all of its affiliated stations. As a secondary affiliate, The WB's programming is aired only when the affiliate is not broadcasting the programming of its primary affiliate. The WB would never choose a secondary affiliation over a primary affiliation, even if the secondary affiliation was with a station with a stronger signal, so long as the primary affiliate is a full power, viable facility.

In those few markets where a station is available for affiliation, the station tends to be the weakest station in the market. Moreover, even if an available station is located in a particular Designated Market Area, the station often is so far removed from the center of the market that its signal may cover only a small portion of the population within that market. The weaker coverage and market position of many of The WB's affiliates, and the correspondingly lower ratings that these stations achieve,[10] translate directly into lower advertising dollars, and, hence, lower revenues.

The enormous task of launching a new network -- both financial and otherwise -- cannot be understated. The WB has been on the air for just over three years, and continues to have a long, arduous path to travel before earning a profit. It has been widely reported that The WB has garnered losses in excess of $200 million since it came on the air.[11] Jamie Kellner, The WB's CEO, has reportedly stated that he does not expect the network to make a profit until approximately the year 2000.[12]

The establishment of a new network as a profitable entity depends in large measure upon the life blood of any national network -- its primary affiliates. Accordingly, if The WB is to survive,

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[10] Although steadily growing, The WB's ratings are currently far lower than the established networks. While The WB's prime time network programs have averaged a 3.0 percent rating to date during the current broadcast season, the prime time rating of NBC, the number one network, averaged 10.7 percent or more than 3.5 times that of The WB. Consequently, although The WB pays established network prices for its programs as it tries to gain a competitive foothold, its revenues lag far behind those of the established networks. The average rating of The WB's affiliates during non-network broadcasts is lower still. As a result, promotions for The WB's network programs during the non-network broadcast hours are viewed by significantly fewer viewers than see promotions on the established networks.

[11] *Id.* UPN reportedly lost an estimated $348 million during the same period. *Id.*

[12] Lynette Rice, Stephen McClellan, *Kellner's latest surprise: the WB gets new legs*, Broadcasting & Cable, Aug. 11, 1997, at 1.

let alone flourish, it must be allowed to compete for affiliates -- now -- in markets in which it has none.[13] In order to promote the efforts of The WB, UPN and other emerging networks, The WB requests that, in adopting rules to implement the new statutory provisions which were enacted as part of the Budget Act, the Commission consider the significant impact that its new rules will have on emerging networks such as The WB. Specifically, The WB requests that the Commission make every effort to ensure that its new rules will facilitate the prompt construction and on-air operation of new television stations, thereby providing The WB and other emerging networks with additional stations and markets in which to gain primary affiliations. Indeed, regardless of whether it is The WB or another new network that gains an affiliate in a particular market, and thereby strengthens its effort to obtain a competitive stronghold with the four established networks, the prompt commencement of new service from additional broadcast outlets and resulting network affiliations will further the significant public interest objective of encouraging the emergence of new national networks.

I. The FCC Should Resolve Conflicts Between Mutually-Exclusive Broadcast Applications, Filed Before July 1, 1997, Through a Competitive Bidding Process.

The WB supports the Commission's conclusion at paragraph 23 of its *NPRM* that, with respect to applications filed before July 1, 1997, conflicts between mutually-exclusive applications should be resolved (absent a settlement) through a competitive bidding process.[14] The use of

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[13] In certain of these markets, a number of entities that have indicated an interest in affiliating with The WB have filed applications for new NTSC stations. None of these parties, however, has any obligation to affiliate with The WB.

[14] With respect to mutually-exclusive applications filed after June 30, 1997, Section 309(j) of the Communications Act makes clear that conflicts between these applications must be (continued...)

auctions will better serve the public interest by allowing for a speedier resolution of mutually-exclusive proceedings, and thereby facilitate the prompt commencement of new broadcast service to the public. As demonstrated above, the prompt initiation of service from new television stations would greatly benefit emerging new networks such as The WB, and, thus, serve the public interest for this reason as well.

II. Section 309(l) of the Act Prohibits the FCC From Opening Filing Windows that Solicit Applications Which Would Be Mutually Exclusive With Applications Filed Before July 1, 1997, and Requires that These Pre-July 1 Applicants Be the Only Qualified Bidders in an Auction Proceeding.

The Commission tentatively interpreted Section 309(l) of the Communications Act ("Act") as prohibiting the Commission from opening any filing windows for additional mutually-exclusive applications, or including as eligible bidders applicants who filed mutually-exclusive applications after June 30, 1997. *NPRM* at ¶23.

The WB supports the Commission's conclusions. The express language of Section 309(l) makes clear that the Commission cannot solicit additional mutually-exclusive applications, or permit such applicants to participate in an auction proceeding:

> With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall . . . (2) treat the persons filing such applications as the *only persons eligible to be qualified bidders for purposes of such proceeding* . . . .

47 U.S.C. §309(l) (emphasis added).

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[14](...continued)
resolved through a public auction. 47 U.S.C. §309(j). *See also NPRM* at ¶40.

The Commission has sought comment concerning whether any other interpretation of the statute would be permissible. However, in light of the plain language of Section 309(l), no other interpretation can be supported. It is well established that "[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of the language accurately expresses the legislative purpose." *Park'n Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). Moreover, it is an axiomatic principle of statutory construction that when the intent of Congress is clear, "that is the end of the matter; for the court, as well as the agency must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984); *see also Pension Benefit Guaranty Corporation v. LTV Corporation*, 496 U.S. 633 (1990).

In this case, the intent of Congress is unmistakably clear. The language of Section 309(l) expressly states that only persons filing applications prior to July 1, 1997, may be considered as eligible bidders in an auction proceeding. Therefore, the Commission is statutorily prohibited from opening filing windows soliciting applications that would be mutually exclusive with those filed before July 1, 1997.

Although it would seem preferable to have single applicants for a broadcast facility pay no amount, if, in the final analysis, the option of opening filing windows is being seriously considered to generate revenue, then it might be prudent to consider a fee approach: With regard to those applications filed before July 1, 1997, which are not mutually exclusive with another application, revenue can be generated for the public treasury without the need to open a filing window to solicit additional, mutually-exclusive applications. In those cases where only one application has been filed for a new broadcast facility, the Commission might establish and assign a value for the license

based on the size of the market, *i.e.*, one fee would be payable for stations in markets 50-60, another fee would be payable for stations in markets 60-70, and so on. As in the case of auctions, the proceeds of the applicant's payment for the new broadcast facility would go to the U.S. Treasury. This would be one means to quickly proceed with pending singleton applications.

III. The FCC Should Continue to Waive the Provisions of Section 73.3525(a)(3) of Its Rules and Permit "White Knight" Settlements for Section 309(l) Applicants.

Section 309(l)(3) of the Act provides that for a period of 180 days following enactment of the Budget Act (*i.e.*, August 5, 1997), the Commission "shall . . . waive *any* provisions of its regulations necessary to permit such persons [*i.e.*, those parties filing applications before July 1, 1997] to enter an agreement to procure the removal of a conflict between their applications . . . ." 47 U.S.C. §309(l)(3) (emphasis added). *See also NPRM* at ¶26. Pursuant to this mandate, the Commission waived the restrictions contained in Section 73.3525(a)(3) of its rules and its general prohibition against "white knight" settlements to permit parties to resolve conflicts between their respective mutually-exclusive applications during the 180-day statutory settlement window. *See NPRM* at ¶26, citing *Gonzales Broadcasting, Inc.*, 12 FCC Rcd 12253, 1255-56 (1997) (waiving Section 73.3525(a)(3)). *See also Edward P. and Pamela J. Levine*, FCC 97I-41 (released December 29, 1997) (waiving white knight prohibition).

Although the Commission indicated that it will not waive its settlement rules after the end of the 180-day statutory period except in extraordinary circumstances, The WB firmly believes that the public interest would be best served by continuing to waive the settlement restrictions and white knight prohibition until the deadline for filing short-form applications. By extending the waiver

period, the Commission would further encourage parties to resolve conflicts between their mutually-exclusive applications, and thereby avoid the delay and unnecessary expense of holding a public auction. Moreover, the Commission not only would hasten the implementation of new service to the public, but, in doing so, would promote the interests of emerging networks such as The WB by making additional broadcast outlets available in the very near future.

As noted in the Comments of Marri Broadcasting, L.P. ("Marri"), there is nothing in the 1997 Act or its legislative history that prohibits the Commission from continuing to waive its settlement restrictions. Indeed, prior to 1990, the Commission had no restrictions on the amount of funds that could be paid to competing applicants in exchange for the dismissal of their mutually-exclusive applications.[15] The Commission also waived its settlement restrictions for a period of 90 days in late 1995 in an effort to help reduce the substantial number of pending comparative cases which had been subject to the comparative hearing "freeze."[16]

Moreover, extending the settlement waiver period would not undermine the Commission's longstanding rationale underlying its settlement restrictions. Both the restrictions on the amount of settlement payments and its white knight prohibition stem from the Commission's concern that permitting such settlements would create an undue economic incentive that would result in the filing of speculative applications in future proceedings (*i.e.*, applications that are filed for the primary purpose of extracting a settlement payment, with the applicant having no intention of constructing and operating the proposed station). *See, e.g., Rebecca Radio of Marco*, 5 FCC Rcd 937, *recon.*

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[15] *See Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits*, 6 FCC Rcd 85 (1990), *recon. granted in part*, 6 FCC Rcd 2901 (1991) (*"Amendment of Settlement Rules"*).

[16] *See Public Notice*, 10 FCC Rcd 12182 (1995).

denied, 5 FCC Rcd 2913 (1990). These concerns do not apply to Section 309(l) applicants because (i) parties who filed applications prior to July 1, 1997, were fully aware of the Commission's settlement restrictions, and, thus, had no incentive to file speculative applications; and (ii) extending the waiver period for Section 309(l) applicants would not result in a threat of future speculative applications. Indeed, parties who now file broadcast applications presumably do so with the knowledge that their application will be subject to an auction, which will not provide an opportunity for a quick settlement.

Furthermore, a continued waiver of the settlement restrictions and the prohibition against white knight settlements would serve the public interest because it would conserve the resources of the parties and of the Commission, and facilitate the prompt commencement of new service to the public. *See Amendment of Settlement Rules*, 6 FCC Rcd at 88. Specifically, applicants would be relieved of the obligation of filing short-form applications, making up-front deposit payments, and/or continuing to monitor these already protracted proceedings. In addition, the Commission's staff, which is well-versed in analyzing settlement proposals, would be relieved of the unfamiliar and time-consuming task of arranging and conducting auctions.

A continued waiver of the settlement restrictions for Section 309(l) applicants also would help alleviate any inequities that may be associated with the unexpected change in the manner in which mutually-exclusive broadcast proceedings are resolved. For example, some commenters have argued that to impose auctions in comparative cases, on a retroactive basis, would result in an unconstitutional "taking" of the applicants' investment in their applications because they now must

purchase the frequency at market value.[17] As Marri suggests, if certain Section 309(l) applicants had known that their applications were going to be subject to an auction, they may not have undertaken the time and expense of prosecuting their applications. A continued waiver of the settlement restrictions and white knight prohibition would provide Section 309(l) applicants with an opportunity to recoup their financial investment and commitment to obtaining the new station through a settlement payment in exchange for the dismissal of their mutually-exclusive application.

IV. The FCC Should Not Subject Mutually-Exclusive Modification Applications to a Competitive Bidding Process.

The Commission has sought comment concerning whether applications seeking to modify existing broadcast facilities -- both major and minor -- should be resolved by auction if they are mutually exclusive with another application. *NPRM* at ¶¶47-48. For the reasons stated below, The WB strongly believes that the Commission should not use auctions to resolve mutually-exclusive modification applications.

Section 309(j) of the Act provides in pertinent part:

> If . . . mutually exclusive applications are accepted for *any initial license or construction permit*, . . . the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding . . . .

47 U.S.C. §309(j) (emphasis added). The express language of Section 309(j) mandates that the FCC subject only *initial* license or construction permit applications to auctions. Congress did not require the FCC to use auctions for modification applications in the 1997 Act (whether for major or minor changes), nor did it explicitly give the Commission discretion to use auctions to resolve conflicts between mutually-exclusive applications. Indeed, there is nothing in the 1997 Act to suggest that

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[17] *See, e.g.*, Comments of Susan M. Bechtel; Comments of George S. Flinn, Jr.

Congress even contemplated subjecting modification applications to competitive bidding. Instead, Congress' concerns arose out of the inherent and well-documented problems with the Commission's comparative hearing process, and were expressly confined to mutually-exclusive applications for new facilities. Unlike applications for new facilities, conflicts between mutually-exclusive modification applications generally have not been resolved through comparative hearings. Therefore, the use of auctions to resolve mutually-exclusive modification applications would be inconsistent with Congress' intent in expanding the use of competitive bidding procedures.

Nevertheless, in the event the FCC elects to use auctions to resolve mutually-exclusive major change applications, The WB urges the Commission to first provide the parties with an opportunity to resolve conflicts between their respective applications. Section 309(j)(6)(E) of the Act provides that nothing in this subsection or in the use of competitive bidding:

> shall be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.

47 U.S.C. §309(j)(6)(E). Accordingly, if a major change application becomes mutually exclusive with another application, the Commission's staff should work with the parties to resolve the mutual exclusivity. If a technical or other solution cannot be found, the Commission should waive its settlement rules before subjecting the applications to a competitive bidding process. Indeed, applications to modify a station's facilities typically result from a licensee's efforts to improve the quality of its service to the public, either by improving the quality of the station's signal or enabling it to reach a greater number of persons. The Commission should not thwart such efforts to serve the

public interest either by discouraging broadcasters from taking such efforts or by requiring them to bid against others -- including applicants for new facilities -- in order to achieve their goal.

The Commission should not use auctions to resolve mutually-exclusive minor change applications under any circumstances. Regardless of the number of such conflicting applications, it would be inequitable to subject licensees to the inherent delay associated with a competitive bidding procedure and require them to incur the substantial additional expenditure of financial resources necessary to prevail in an auction, especially where the proposed minor change may be involuntary. For example, certain analog television stations may be forced to move to a new transmitter site in order to accommodate new DTV facilities. It would be inequitable to force such licensees, who have expended substantial time and financial resources in (i) the preparation, filing and prosecution of their applications (which may include submitting the necessary funds to obtain their station license at a public auction), and (ii) the construction and operation of their station; to risk their entire investment by subjecting that licensee to another auction in order to move to a new site and continue operating. Instead, the Commission should make every effort to resolve the mutual exclusivity through the means set forth in Section 309(j)(6)(E) of the Act, implement a liberal waiver policy with respect to short-spaced proposals in order to help alleviate any mutual exclusivity between minor change applications, and consider all relevant public interest factors, including the substantial public interest in continued broadcast service.

The Commission also should not require licensees to wait for a filing window before they may seek to modify their facilities. Unlike applications for new facilities, the need to file a modification application generally is determined by the needs and interests of individual licensees, and often may be dictated by circumstances beyond their control.

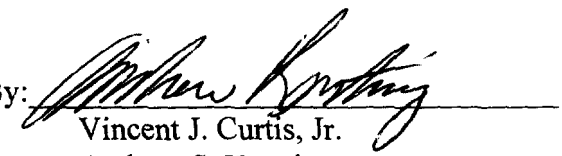
CONCLUSION

As demonstrated herein, The WB, as well as other emerging networks, have a strong interest in having the new rules adopted in this proceeding facilitate the prompt commencement of new service from new television stations. The additional broadcast outlets will provide these networks with the opportunity to acquire additional primary affiliates, which are so vital to their continued existence. In order to facilitate the prompt commencement of new service, and thereby further the significant public interest objective of encouraging the emergence of new networks, the Commission should resolve conflicts between Section 309(l) applications through a competitive bidding process. Moreover, with respect to these applications which were filed before July 1, 1997, the Commission is statutorily prohibited from opening filing windows to solicit additional mutually-exclusive applications, or including as eligible bidders parties who filed mutually-exclusive applications after June 30, 1997.

In order to further encourage Section 309(l) applicants to resolve conflicts between their mutually-exclusive applications, and, at the same time, conserve the resources of the parties and of the Commission in avoiding the delay and expense involved in conducting a public auction, the Commission should continue to waive the provisions of Section 73.3525(a)(3) of its rules and permit white knight settlements for Section 309(l) applicants until the short-form application deadline. Furthermore, the Commission should not subject mutually-exclusive modification applications to auctions.

Respectfully submitted,

THE WB TELEVISION NETWORK

By: 
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February 17, 1998

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 17th day of February, 1998, copies of the foregoing Reply Comments were mailed first-class, postage pre-paid, to the following:

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